

**Plaintiff
Jackie Fisher's**

**Response in Opposition
to Defendants'**

**Motion for
Summary
Judgment**

EXHIBIT

59



Board of Nurse Examiners For the State of Texas

Location Address: William P. Hobby Building, Ste. 3-460, 333 Guadalupe Street, Austin, Texas 78701
Phone: (512) 305-7400 Fax: (512) 305-7401 Web: www.bne.state.tx.us

Katherine A. Thomas, MN, RN
Executive Director

October 6, 2006

Certified Mail No. 7006 0810 0005 9393 6405

Return Receipt Requested

Jacklyn Lynette Fisher
1150 FM 2296 Rd.
Huntsville, Texas 77340

Dear Ms. Fisher:

Enclosed, please find a proposed Agreed Order for your review. If you choose to sign this Order, you must sign and date the proposed Agreed Order before a notary public. To be accepted, the signed Order must be received within three weeks from the date of this letter. The Order will become effective upon my signature and a final copy will be mailed to you.

If you have any questions please contact the investigator. If you do not return the signed and notarized Order within three weeks from the date of this letter, formal charges may be filed and the matter scheduled for a public disciplinary hearing.

The results of any disciplinary action are public information. Dispositions will appear in the Board's quarterly newsletter. The information will also be forwarded to the National Council of State Boards of Nursing, Inc., and to the Healthcare Integrity and Protection Data Bank (HIPDB).

Sincerely,

A handwritten signature in cursive script, reading "Katherine A. Thomas".

Katherine A. Thomas, MN, RN
Executive Director

KAT/klw

Enclosure

0400/E20

FISHER-101049

Members of the Board

| | | | | |
|---------------------------------|---------------------------------------|--|--|---|
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**BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS**

| | | |
|---|---|--------|
| In the Matter of Registered Nurse License Number 595688 | § | AGREED |
| issued to JACKLYN LYNETTE FISHER | § | ORDER |

An investigation by the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, produced evidence indicating that JACKLYN LYNETTE FISHER, License Number 595688, hereinafter referred to as Respondent, may have violated Section 301.452 (b)(13), Texas Occupations Code.

An informal conference was held on December 20, 2005, at the office of the Board of Nurse Examiners, in accordance with Section 301.464, Texas Occupations Code.

Respondent was not in attendance, but agreed to have her case heard telephonically. Respondent was notified of her right to be represented by legal counsel and elected to waive representation by counsel. In attendance were Katherine A. Thomas, MN, RN, Executive Director; James W. Johnston, General Counsel; Anthony L. Diggs, MSCJ, Director, Enforcement Division; Desha Melton, RN, Investigator; and Kim Williamson, RN, Investigator.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license.
2. Respondent waived representation by counsel, notice and hearing, and consented to the entry of this Order.
3. Respondent is currently licensed to practice professional nursing in the State of Texas.

4. Respondent received an Associate Degree in Nursing from North Harris Montgomery Community College District, Houston, Texas, on May 11, 1993. Respondent was licensed to practice professional nursing in the State of Texas on September 22, 1993.
5. Respondent's professional employment history includes:

| | |
|----------------------------------|---|
| 9/93 to 7/95 | RN, Staff Nurse Medical Center Hospital Conroe, Texas |
| 7/95 to 5/96 | RN, Director of Nursing Willis Convalescent Hospital Willis, Texas |
| 6/96 to 2/01 | RN, Staff Nurse Medical Center Hospital Conroe, Texas |
| 10/00 to 8/03 8/03 to present | RN, Assistant Nurse Manager RN Cluster Nurse Manager The University of Texas Medical Branch Correctional Managed Care Huntsville, Texas |
6. At the time of the initial incident in Finding of Fact Number Seven (7), Respondent was employed as a Cluster Nurse Manager with The University of Texas Medical Branch, Correctional Managed Care, Huntsville, Texas, and had been in this position for one (1) year.
7. On or about August 19, 2004, while employed as a Cluster Nurse Manager with The University of Texas Medical Branch, Correctional Managed Care, Huntsville, Texas, and providing care to Inmate Number 695377, who had placed a sheet around his neck, Respondent failed to accurately and completely assess the inmate when the inmate refused to be transferred to a psychiatric facility for immediate evaluation as ordered by the physician. Respondent was on call and performed an assessment by telephone, and documented the inmate had a history of suicide attempts and denied intentions to kill himself. Respondent instructed the security staff to have the inmate sign a refusal of treatment. The inmate was evaluated by the mental health staff on or about August 20, 2004, and was determined to be at a low imminent risk for a potential lethal suicide attempt. Respondent's conduct exposed the inmate unnecessarily to a risk of harm from failure to perform a complete, in person assessment, by medical personnel and may have resulted in subtle information being missed when the inmate initially had the sheet around his neck. The inmate was found dead in his cell from hanging on August 27, 2004.

8. On or about August 19, 2004, while employed as a Cluster Nurse Manager with The University of Texas Medical Branch, Correctional Managed Care, Huntsville, Texas, and providing care to the aforementioned inmate, Respondent failed to notify the physician of the inmate's refusal to be transferred to a psychiatric facility for immediate evaluation and Crisis Management as the physician had ordered. Respondent's conduct deprived the physician of vital information on which to base the medical and psychiatric care of this inmate and resulted in the inmate not having a mental health evaluation until the following day.
9. On or about August 19, 2004, while employed as a Cluster Nurse Manager with The University of Texas Medical Branch, Correctional Managed Care, Huntsville, Texas, and providing care to the aforementioned inmate, Respondent failed to ensure the inmate received close supervision once the inmate refused to be transferred to a psychiatric facility for immediate evaluation and Crisis Management, as ordered by the physician. Respondent's conduct exposed the inmate unnecessarily to a risk of harm from failure to have this inmate, who had orders for Crisis Management, closely supervised by medically trained staff. The inmate was found dead in his cell from hanging on August 27, 2004.
10. On March 17, 2005, Respondent successfully completed a course in nursing jurisprudence and nursing ethics, "Nursing in Texas: A Regulatory Foundation for Safe Practice," which would have been a requirement of this Order.
11. On September 23, 2004, Respondent attended an inservice on Suicide Prevention, presented by E. Sylvia, MA, Staff Psychotherapist, which would have been a requirement of this Order.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. Notice was served in accordance with law.
3. The evidence received is sufficient to prove violations of Section 301.452(b)(13), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.11(2),(4)&(21).
4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against License Number 595688, heretofore issued to JACKLYN LYNETTE FISHER, including revocation of Respondent's professional license to practice nursing in the State of Texas.

ORDER

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Board of Nurse Examiners, that RESPONDENT SHALL receive the sanction of REMEDIAL EDUCATION, and RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Revised Civil Statutes of Texas as amended, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 *et seq.* and this Order.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Respondent's multistate licensure privilege, if any, to practice professional nursing in compact states.

IT IS FURTHER AGREED and ORDERED that while Respondent's license is encumbered by this Order, Respondent may not work outside the State of Texas pursuant to a multistate licensure privilege without the written permission of the State of Texas and the Board of Nursing in the party state where Respondent wishes to work.

IT IS FURTHER AGREED that:

(1) RESPONDENT SHALL deliver the wallet-sized license issued to JACKLYN LYNETTE FISHER to the office of the Board of Nurse Examiners within ten (10) days of the date of ratification of this Order for appropriate notation.

(2) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in physical assessment. RESPONDENT SHALL obtain Board approval of the course prior to enrollment. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include Nurses. The didactic portion of this

course shall be a minimum of six (6) hours in length. RESPONDENT SHALL perform physical assessments on live patients in a clinical setting for a minimum of twenty-four (24) hours. The clinical component SHALL focus on tasks of physical assessment only and shall be provided by the same Registered Nurse who provides the didactic portion of this course. To be approved, the course shall cover all systems of the body. Performing assessments on mock patients or mannequins WILL NOT be accepted. The course description shall indicate goals and objectives for the course, resources to be utilized, and the methods to be used to determine successful completion of the course. RESPONDENT SHALL successfully complete both the didactic and clinical portions of the course to satisfy this stipulation. RESPONDENT SHALL CAUSE the instructor to submit a Verification of Course Completion form, provided by the Board, to the office of the Board to verify RESPONDENT's successful completion of the course. This course shall be taken in addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure. *Board-approved courses may be found on the Board's website, www.bne.state.tx.us (under BNE events).*

(3) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in nursing documentation. RESPONDENT SHALL obtain Board approval of the course prior to enrollment only if the course is not being offered by a pre-approved provider. Home study courses and video programs will not be approved. The course shall be a minimum of six (6) hours in length of classroom time. In order for the course to be approved, the target audience shall include Nurses. The course shall include content on the following: nursing standards related to accurate and complete documentation; legal guidelines for recording; methods and processes of recording; methods of alternative record-keeping; and computerized documentation.

RESPONDENT SHALL cause the instructor to submit a Verification of Course Completion form, provided by the Board, to the Board's office to verify RESPONDENT's successful completion of the course. This course shall be taken in addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure. *Board-approved courses may be found on the Board's website, www.bne.state.tx.us (under BNE events).*

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, RESPONDENT SHALL be issued an unencumbered license and multistate licensure privileges, if any, to practice professional nursing in the State of Texas.

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RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order. I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violations alleged herein. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order, to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that when this Order becomes final and the terms of this Order become effective, a copy will be mailed to me. I understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including revocation of my license to practice professional nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 8 day of November, 20 06.

Jacklyn Lynette Fisher
JACKLYN LYNETTE FISHER, RESPONDENT

Sworn to and subscribed before me this 8th day of November, 20 06.

Kevin L. Brown
Notary Public in and for the State of Texas



WHEREFORE, PREMISES CONSIDERED, the Executive Director, on behalf of the Board of Nurse Examiners for the State of Texas, does hereby ratify and adopt the Agreed Order that was signed on the _____ day of _____, 20____, by JACKLYN LYNETTE FISHER, Registered Nurse License Number 595688, and said Order is final.

Effective this _____ day of _____, 20____.

Katherine A. Thomas, MN, RN
Executive Director on behalf
of said Board

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NURSE EXAMINERS
DALUPE, SUITE 3-460
AUSTIN, TEXAS 78701

CONFIDENTIAL

FISHER-101058

Jacklyn Lynette Fisher
1150 FM 2296 Rd
Huntsville, Tx 77340

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